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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/222,282 12/28/98 RASPER

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EXAMINER

RUSSELL L JOHNSON
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QM12/0326

TRAN, K ART UNIT	PAPER NUMBER
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3724
DATE MAILED:

16
03/26/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/222,282

Applicant(s)

RASPER ET AL.

Examiner

Kim Tran

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 02 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☒ Other: *Attachment*.

DETAILED ACTION

1. The Applicant's Appeals Brief has been acknowledged. However, upon further consideration and review, the Examiner has withdraw the previous office action, paper no. 6. The following is a new office action addressing claim 1.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey in view of Kanbar. Bailey discloses the invention substantially as claimed including a circular knife (47), mounting mandrel (38), index engaging means (col. 3, lines 4-9), and means for counting the cutting cycles, and activating the knife indexing means when a preset number of cutting cycles has been completed (col. 3, lines 57-67 and col. 4, lines 1-4). Bailey does not disclose a worm gear and worm shaft. However, Kanbar teaches a worm gear and worm shaft to drive the shaft of a roller (fig. 1, col. 3, lines 29-37). In view of Kanbar, it would have been obvious to one of ordinary skill in the art to provide the apparatus of Bailey with a worm gear and worm shaft to 1) element the need to manually drive the shaft (44) of Bailey which indexes the circular knife 2) it is well known in the art to provide a worm gear and worm shaft mechanism to generate rotary motion.

Response to Arguments

4. In response to Applicant's argument that Bailey was not available as a 35 USC 103(a) reference, the Examiner disagrees. The rejection is proper because Bailey, U.S. Patent No. 5,761,976 was **filed on April 15, 1997** and issued June 9, 1998 while applicant's invention claims priority of the Provisional Patent Application 60/070,405 **filed on January 1, 1998**. Bailey qualifies as a 35 U.S.C. 102(e) which relies on the **filing date**. Therefore, Bailey as a 35 U.S.C. 103 (a) reference is deemed proper.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Tran whose telephone number is 703-305-2597. The examiner can normally be reached on Monday through Friday from 8-5:30 pm.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-2597 for regular communications and 703-305-9835 for After Final communications.

7. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



knt
March 20, 2001



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700